

REMARKS

Specification on page 5 has been amended as recommended by the Examiner.

In addition, a proposed drawing change to Figures 2 and 3 is enclosed herewith with the proposed changes indicated in red. Specifically, the character reference "16" has been added to correspond to the specification nomenclature as originally appears in the specification on page 4, last paragraph.

Claims 1-14 have been rejected by the Examiner under 35 USC 112, first paragraph, as failing to comply with the enablement requirement.

This rejection, as well as the rejection by the Examiner of claims 1-14 under 35 USC 112, second paragraph, has arisen because of the Applicants inadvertent reference to the periphery 16 as a circumference in the specification and claims 2, 5, 7, and 11.

Amendment has been made to replace the term "circumference" in the specification on page 2 and in the cited claims to provide consistency in the application and overcome the Examiner's rejection of claims 1-14 under 35 USC 112, first paragraph and second paragraph. No new matter has been added inasmuch as the periphery 16 is originally noted in the specification beginning on page 4, last paragraph, as hereinabove noted.

In addition, the drawings have been amended to add the character reference 16, also hereinabove noted, to correspond the drawings to the specification and to overcome the Examiner's objection thereto under 35 CFR 1.83(a).

The Examiner has rejected claim 1 under 35 USC 102(b) as being anticipated by U.S. 5,271,101. In response thereto the Applicant has cancelled claim 1.

Claims 2-14 have been rejected by the Examiner under 35 USC 103(a) as being unpatentable over Speth, et al. in view of U.S. 6,547,327 to Yates.

The Applicant submits that this combination is improper since Yates '327 is unavailable as a reference. As set forth in In re Fout, Mishkin, and Roychoudury, 213 USPQ 532, 535 (CCPA 1962), unless there is a statutory bar under 35 U.S.C. 102(b), (c), or (d), the Applicants own invention cannot be "prior art" to him. That is, foundational work product of an inventor who continues to improve on his own work product should not, without statutory basis, be treated as prior art solely because he admits knowledge of his own work. A statutory basis is required to support the loss of ones existing right to a patent. Reading and Bates Construction Co. v. Baker Energy Resources Corporation, et al., 223 USPQ 1168, 1172 (CAFC 1994).

The only statutory basis for making the Yates '327 reference unavailable would be 35 USC 102(b). That is, the invention was patented or described in a printed

publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the present application for a patent in the U.S.

In view of the fact that Yates '327 issued on April 15, 2003 and the present application was filed on April 8, 2004, less than one year than the issuance of the Yates '327 patent, there is no statutory basis for making the Yates '327 reference prior art to the present application.

In view of the unavailability of the Yates '327 reference, the Applicant submits that the Examiner has not made a prima facie case of obviousness for claims 2-14 and respectfully request withdrawal of the 35 USC 103 rejection.

In addition, the Examiner has rejected claims 1-14 under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,547,327 to Yates in view of the Speth, et al. reference.

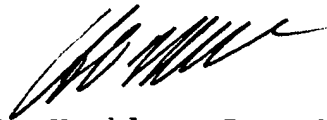
In response thereto, the Applicant herewith submits a terminal disclaimer to overcome this rejection.

Further, the Examiner has provisionally rejected claims 1-14 under the judicially created doctrine of obvious-double patenting as being unpatentable over claim 1 of co-pending application serial no. 29/203,155.

In response thereto, the Applicant herewith submits a terminal disclaimer to overcome this provisional rejection.

In view of the arguments hereinabove set forth and amendment to the claims and specification, it is submitted that each of the claims now in the application define patentable subject matter not anticipated by the art of record and not obvious to one skilled in this field who is aware of the references of record. Reconsideration and allowance are respectively requested.

Respectfully submitted,



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IN THE DRAWINGS

A new sheet 2 of drawings is submitted with proposed changes in red ink. Upon approval by the Examiner, new formal drawings will be submitted.